



# INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

*We Protect Hoosiers and Our Environment.*

*Mitchell E. Daniels, Jr.*  
**Governor**

*Thomas W. Easterly*  
**Commissioner**

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STATE OF INDIANA ) SS: BEFORE THE INDIANA DEPARTMENT OF  
COUNTY OF MARION ) ENVIRONMENTAL MANAGEMENT

COMMISSIONER OF THE DEPARTMENT  
OF ENVIRONMENTAL MANAGEMENT,

Complainant,

v.

NATURE'S FUEL ATWOOD, LLC,

Respondent.

Case No. 2009-18768-S

## AGREED ORDER

Complainant and Respondent desire to settle and compromise this action without hearing or adjudication of any issue of fact or law, and consent to the entry of the following Findings of Fact and Order. Pursuant to IC 13-30-3-3, entry into the terms of this Agreed Order does not constitute an admission of any violation contained herein. Respondent's entry into this Agreed Order shall not constitute a waiver of any defense, legal or equitable, which Respondent may have in any future administrative or judicial proceeding, except a proceeding to enforce this order.

### I. FINDINGS OF FACT

1. Complainant is the Commissioner ("Complainant") of the Indiana Department of Environmental Management ("IDEM"), a department of the State of Indiana created by Indiana Code ("IC") 13-13-1-1.
2. Respondent is Nature's Fuel Atwood, LLC, which operates a facility located at 510 E. Main Street in Atwood, Kosciusko County, Indiana (the "Site").
3. Respondent operates a pyrolysis unit which is mainly used to convert wood and wood waste to renewable energy. As part of this process, bio gas, bio oil, and bio char (char) are produced.
4. Respondent has submitted applications to IDEM for a Research, Development, and Demonstration Permit for exploring the potential of alternate technologies, techniques,

environmental controls, feedstocks, etc., as well as for a Land Application Marketing and Distribution Permit. Respondent also has a Pending Air Permit, No. 28516, which is currently on public notice.

5. As part of this Agreed Order, Respondent agrees to cease all pyrolysis operations at the Site on or before January 31, 2011. Respondent also agrees to withdraw the Research, Development, and Demonstration and the Land Application Marketing and Distribution permit applications for this Site which are pending at IDEM within ten (10) days of the Effective Date.
6. IDEM has jurisdiction over the parties and the subject matter of this action.
7. Pursuant to IC 13-30-3-3, IDEM issued a Notice of Violation ("NOV"), via Certified Mail, for violations found during inspections conducted on August 4, 5, 6, 10, 2009 and September 2, 2009, to:

Glenn W. Johnson, Managing Member  
Nature's Fuel Atwood, LLC  
421 E. Cook Road, Suite 400  
Fort Wayne, Indiana 46825

Solomon L. Lowenstein Jr., Registered Agent for  
Nature's Fuel Atwood, LLC  
614 West Berry Street, Suite A  
Fort Wayne, Indiana 46802

8. Respondent waives issuance of a Notice of Violation and to the settlement period of sixty (60) days as provided for by IC 13-30-3-3 for the following violations.
  - a. On May 23, 2009, Respondent allowed accumulation of char that contributed to a fire causing air pollution to occur outside the facility in a char storage container requiring a response by the Atwood Fire Department in violation of Condition C.4 of Permit, 085-26494-00115 and 326 IAC 4-1-2;
  - b. On May 21, 2009, during an inspection conducted by IDEM, a small smoldering fire causing air pollution was observed in a char box located on the North side of the facility in a designated isolation zone in violation of Condition C.4 of Permit, 085-26494-0115 and 326 IAC 4-1-2;
  - c. On December 24, 2009, Respondent allowed accumulation of char that contributed to a fire causing air pollution to occur outside the facility in a char storage container requiring a response by the Atwood Fire Department in violation of Condition C.4 of Permit, 085-26494-00115 and 326 IAC 4-1-2;
  - d. On April 19, 2010, Respondent allowed the accumulation of char, that was isolated outdoors, to contribute to a fire causing air pollution to occur outside the facility in six (6) char storage containers requiring a response by the Atwood Fire Department in violation of Condition C.4 of Permit, 085-26494-00115 and 326 IAC 4-1-2; and

- e. On January 14 and 15, 2010, Respondent demonstrated a VOC emissions rate of 1.49 lbs/hr of VOC per ton of the feedstock, in violation of Condition D.1.2 of Permit, 085-26494-00115 during a stack test conducted on the Carbon and Lime Injected Baghouse.

- 9. During an investigation including inspections on August 4, 5, 6, 10, 2009 and September 2, 2009, conducted by a representative of IDEM, the following violation was found:

- a. Pursuant to IC 13-30-2-1(5), no person may dump or cause or allow the open dumping of garbage or any other solid waste in violation of 329 IAC 10-4-2 and 329 IAC 10-4-3.

As noted during the August inspection dates, Respondent dumped or caused or allowed the open dumping of solid waste in violation of 329 IAC 10-4-2 and 329 IAC 10-4-3 in the following instances:

- i. Approximately three thousand (3,000) gallons of bio oil and over one thousand (1,000) gallons of water used to clean the bio oil tank were dumped onto the ground between the main building and the wood scrap storage building; and
- ii. Solid waste was observed along the southeast side of the property where unusable bio char generated from extinguishing smoldering char was disposed on a concrete pad and surrounding area located behind the plant.

- 10. During an investigation including an inspection on May 21, 2009 and a record review on June 16, 2010, conducted by a representative of IDEM, the following violations were found:

- a. Pursuant to FESOP Permit No. 085-26494-00115, Condition C.4, Open Burning, and 326 IAC 4-1-2, Respondent shall not open burn any material except as provided in 326 IAC 4-1-3, 326 IAC 4-1-4 or 326 IAC 4-1-6.

As noted during the inspection and/or record review, Respondent allowed open burning in the following instances:

- i. On May 23, 2009, Respondent allowed accumulation of char that contributed to a fire causing air pollution to occur outside the facility in a char storage container requiring a response by the Atwood Fire Department in violation of Condition C.4 of Permit, 085-26494-00115 and 326 IAC 4-1-2;
- ii. On May 21, 2009, during an inspection conducted by IDEM, a small smoldering fire causing air pollution was observed in a char box located on the North side of the facility in a designated isolation zone in violation of Condition C.4 of Permit, 085-26494-00115 and 326 IAC 4-1-2;
- iii. On December 24, 2009, Respondent allowed accumulation of char that contributed to a fire causing air pollution to occur outside the facility in a char

storage container requiring a response by the Atwood Fire Department in violation of Condition C.4 of Permit, 085-26494-00115 and 326 IAC 4-1-2; and

- iv. On April 19, 2010, Respondent allowed accumulation of char that contributed to a fire causing air pollution to occur outside the facility in six (6) char storage containers requiring a response by the Atwood Fire Department in violation of Condition C.4 of Permit, 085-26494-00115 and 326 IAC 4-1-2.
- b. Pursuant to FESOP Permit No. 085-26494-00115, Condition D.1.2, Respondent's pyrolysis unit is limited to 0.89 lbs/hr of VOC per ton of the feedstock, and the amount of the feedstock shall not exceed 55,500 tons per twelve (12) consecutive month period, with compliance determined at the end of each month.

As noted during the record review, during a stack test conducted on the Carbon and Lime Injected Baghouse on January 14 and 15, 2010, Respondent demonstrated a VOC emissions rate of 1.49 lbs/hr of VOC per ton of the feedstock, in violation of Condition D.1.2 of Permit, 085-26494-00115.

On September 9, 2009 Respondent submitted application, No. 085-28516-00115 requesting that the maximum capacity of the pyrolysis unit be decreased from 10 tons per hour to 4.5 tons per hour. Condition D.1.3, of draft Permit No. 085-28516-00115 states that VOC emissions from the pyrolysis unit shall not exceed 1.49 pounds of VOC per ton of feedstock processed. Respondent will be in compliance with the VOC emissions limits of 1.49 pounds of VOC per ton of feedstock processed upon issuance of Permit No. 085-28516-00115. Compliance with this limit in conjunction with Conditions D.1.1(a) and (b), shall limit the potential to emit VOC from the pyrolysis unit to less than 25 tons per 12 consecutive month period and shall render the requirements of 326 IAC 8-1-6 (VOC Rules: General Reduction Requirements for New Facilities New Facilities) not applicable.

- 11. Pursuant to I.C. § 13-14-8-8, Respondent has requested a variance from the requirement to obtain a solid waste processing permit due to undue hardship and burden upon the Respondent. IDEM agrees to grant a variance for this requirement up to and including January 31, 2011, provided the Respondent complies with all aspects of this Agreed Order, including all Best Management Practices and the requirement to cease all pyrolysis operations by January 31, 2011.
- 12. In recognition of the settlement reached, Respondents waives any right to administrative and judicial review of this Agreed Order.

## **II. ORDER**

1. This Agreed Order shall be effective ("Effective Date") when it is approved by Complainant or Complainant's delegate, and has been received by Respondent. This Agreed Order shall have no force or effect until the Effective Date.
2. Respondent shall cease all pyrolysis operations at this Site on or before January 31, 2011. The remaining waste wood and other waste raw materials stored at the Site shall be removed within thirty (30) days of cessation of pyrolysis operations, but no later than March 2, 2011. After ceasing of the pyrolysis operations, the bio char shall be removed within thirty (30) days of cooling to less than 120°F.
3. The equipment used for processing the waste wood such as the conveyors, pyrolysis reactor, baghouse, and condenser shall be cleaned of waste or product within ninety (90) days following cessation of pyrolysis operations, but no later than May 1, 2011. The bio oil produced or stored at the Site shall be sold and removed or sent for proper disposal within one hundred eighty (180) days of January 31, 2011. After removal of bio oil, the tanks shall be cleaned with proper disposal of any liquids generated. Respondent shall provide IDEM with documentation demonstrating that any liquids generated from the cleaning of these units have been properly disposed within forty five (45) days of cleaning.
4. Within ten (10) days of the Effective Date, Respondent shall withdraw the Research, Development, and Demonstration and the Land Application Marketing and Distribution permit applications for this Site which are pending at IDEM
5. In the future, Respondent shall not construct and/or operate a pyrolysis facility that accepts solid waste in the State of Indiana without first obtaining a solid waste processing facility permit under 329 IAC 11-9.
6. Upon the Effective Date and until such time as operations cease at the Site, Respondent shall follow the Best Management Practices ("BMPs") listed below. Specifically, Respondent shall abide by the following:
  - a. Char Management
    - i. The Char must be heat reduced during the process using a combination of steam cooling, water jacketed char coolers which are also infused with steam, dry auguring, air drop cooling into a steel container, auguring and air dropping into a heavy Mylar bag within a Gaylord shipping container at less than 120 degrees F;
    - ii. Prior to sealing the Mylar bag and removing the container from the filling station, the container must be checked for any hot spots with an infra red gun and be less than 120 degrees F;

- iii. Sealed containers will be placed along the concrete and steel wall in the receiving area for at least 24 hours and checked at least twice during that period with an infra red gun for hot spots;
  - iv. An increase in the temperature of the char containers shall trigger corrective action. Char containers shall be removed or isolated from other containers in storage;
  - v. After sealed containers have been held and checked, they may be placed in the storage barn, separated by at least 8 feet from wood feedstock material;
  - vi. All containers must be separated by an adequate fire lane when in storage;
  - vii. A radio controlled smoke detector that broadcasts to the plant must be used in the storage area at all times and checked at least monthly to assure it is operational
  - viii. A fire extinguisher shall be at every man door of the storage barn and certified operational; and
  - ix. When the plant is not operational, it shall maintain a fire watch to check for smoldering, smoke alarms, and for hot spots in the char or feedstock using an infra red device.
- b. No production operations shall occur on weekends or on federal holidays. The plant may start heating on the third shift on Sunday, but shall not start feeding production rates of feedstock until Monday at 7 AM. The plant shall turn off all production feeding no later than 12:00 PM (noon) on Friday afternoon.
- c. Noise Levels
- i. Measure noise levels at specific locations throughout the interior and exterior of the plant, while in production mode (e.g. wood drying unit, pyro unit, centrifuge, baghouse, west and south property lines, etc.);
  - ii. Record measured noise levels in daily operating record for each location; and
  - iii. Develop action levels for noise levels at each location.
  - iv. Noise from safety relief valve (fike valve) discharges upon cooling or heating are allowed, but any occurrence must be logged and reported to IDEM Northern Regional Office at 574-245-4871 to assure emissions from such releases are captured.
- d. Spills/Releases
- i. Report any spill reportable under the spill rule, 327 IAC 2-6.1, to any applicable local emergency or health authorities as well as to IDEM at 877-233-7745; report any other spills/releases, including, but not limited to, tank overfills into containment, to the IDEM Northern Regional Office at 574-245-4871.

- ii. Document all spills/releases in the operating record; and
    - iii. Monitor and record tank levels on a daily basis.
  - e. Develop and implement a written QA/QC program for screening of glycerin used for quench of pyrolysis gasses within fifteen (15) days of the Effective Date.
  - f. Complaints
    - i. Record all complaints (Regardless of type, noise, odor, etc.) in daily operating record;
    - ii. Record what processes are being conducted at the time the complaints are registered;
    - iii. IDEM will notify Respondent of all complaints the Agency receives for Respondent to record in the daily operating record; and
    - iv. Respondent shall investigate and to the extent possible mitigate odors when complaints are received.
  - g. Install a windsock to identify wind direction to assist in identification of possible sources of odor and impact on downwind properties. Respondent shall document odor complaints received from citizens and IDEM.
  - h. Only wood chips and sealed containers of char which have passed through the assurance procedures in 6a above may be stored in the outer storage building (no hot or cooled loads of bio char, or oils can be mixed with the wood stored there).
7. In regards to Finding 9 i and ii, Respondent will take up to five (5) samples for VOCs in the area directly in back of the plant that yielded reportable levels of naphthalene and two other components of hydrocarbon from an earlier sampling. The precise location, number and depth of the samples will be defined during a site visit between IDEM and Respondent within five (5) working days of the Effective Date.
8. Upon the Effective Date, Respondent shall comply with FESOP Permit No. 085-26494-00115, Condition C.4, Open Burning and 326 IAC 4-2. Specifically, Respondent shall not open burn any material except as provided in 326 IAC 4-1-3, 326 IAC 4-1-4 or 326 IAC 4-1-6.
9. Upon the Effective Date of Permit No. 28516, Respondent shall comply with FESOP Permit No. 085-28516-00115.
10. All submittals required by this Agreed Order, unless Respondent is notified otherwise in writing by IDEM, shall be sent to:

Brenda Lepter, Enforcement Case Manager  
Office of Land Quality – Mail Code 60-02L  
Indiana Department of Environmental Management  
100 North Senate Avenue  
Indianapolis, IN 46204-2251

11. Respondent is assessed a civil penalty of Nine Thousand Dollars (\$9,000) for solid waste violations and Two Thousand Four Hundred Dollars (\$2,400) for air violations for a total civil penalty of Eleven Thousand Four Hundred Dollars (\$11,400). Within thirty (30) days of the Effective Date of the Agreed Order, Respondent shall pay a portion of this penalty in the amount of Six Thousand Nine Hundred Dollars (\$6,900). Said penalty amount shall be due and payable to the Environmental Management Special Fund. In lieu of payment of the remaining civil penalty, Respondent shall perform and complete a Supplemental Environmental Project ("SEP"). Respondent estimates that this SEP will cost Nine Thousand Dollars (\$9,000). Within thirty (30) days of completing this SEP, Respondent shall submit written notice and documentation to IDEM which substantiates all actions taken and costs incurred with respect to the SEP. In the event that the cost of the SEP is less than Nine Thousand Dollars (\$9,000), Respondent shall pay fifty percent (50%) of the difference between the proposed cost of the SEP and the actual cost of the SEP.

As a Supplemental Environmental Project, Respondent shall plant evergreen trees between the plant and the railroad. Respondent shall provide documentation of the planting of the trees through submittal of a bill of sale and photographs of the trees by no later than August 30, 2010. Implementation of this SEP will provide a visual and sound barrier between the plant and the neighboring homes.

In the event that Respondent does not complete the SEP by August 30, 2010, the full amount of the civil penalty as stated above, plus interest established by IC 24-4.6-1-101 on the remaining amount, less the portion of the civil penalty Respondent has already paid, will be due within fifteen (15) days from Respondent's receipt of IDEM's notice to pay. Interest, at the rate established by IC 24-4.6-1-101, shall be calculated on the amount due from the date which is thirty (30) days after the Effective Date of this Agreed Order until the full civil penalty is paid.

12. In the event the terms and conditions of the following paragraphs are violated, Complainant may assess and Respondent shall pay a stipulated penalty in the following amount:

Failure to Comply with Order paragraph No.2	\$1,000 per day
Failure to Comply with Order paragraph No.3	\$1,000 per day
Failure to Comply with Order paragraph No.6	\$100 per each BMP not followed per day



Failure to Comply with Order paragraph No.7      \$1,000 per week.

13. Stipulated penalties shall be due and payable within thirty (30) days after Respondent receives written notice that Complainant has determined a stipulated penalty is due. Assessment and payment of stipulated penalties shall not preclude Complainant from seeking any additional relief against Respondent for violation of this Agreed Order. In lieu of any of the stipulated penalties set out above, Complainant may seek any other remedies or sanctions available by virtue of Respondent's violation of this Agreed Order or Indiana law, including, but not limited to, civil penalties pursuant to IC 13-30-4.
14. Civil and stipulated penalties are payable by check to the "Environmental Management Special Fund." Checks shall include the Case Number of this action and shall be mailed to:  
  
Indiana Department of Environmental Management  
Cashier – Mail Code 50-10C  
100 North Senate Avenue  
Indianapolis, IN 46204-2251
15. This Agreed Order shall apply to and be binding upon Respondent and its successors and assigns. Respondent's signatories to this Agreed Order certify that they are fully authorized to execute this Agreed Order and legally bind the party they represent. No change in ownership, corporate, or partnership status of Respondent shall in any way alter its status or responsibilities under this Agreed Order.
16. In the event that any terms of this Agreed Order are found to be invalid, the remaining terms shall remain in full force and effect and shall be construed and enforced as if this Agreed Order did not contain the invalid terms.
17. Respondent shall provide a copy of this Agreed Order, if in force, to any subsequent owners or successors before ownership rights are transferred. Respondent shall ensure that all contractors, firms and other persons performing work under this Agreed Order comply with the terms of this Agreed Order.
18. This Agreed Order is not and shall not be interpreted to be a permit or a modification of an existing permit. This Agreed Order, and IDEM's review or approval of any submittal made by Respondent pursuant to this Agreed Order, shall not in any way relieve Respondent of its obligation to comply with the requirements of its applicable permit or any applicable Federal or State law or regulation.
19. Complainant does not, by its approval of this Agreed Order, warrant or aver in any manner that Respondent's compliance with any aspect of this Agreed Order will result in compliance with the provisions of any permit, order, or any applicable Federal or State law or regulation. Additionally, IDEM or anyone acting on its behalf shall not be held liable for any costs or penalties Respondent may incur as a result of Respondent's efforts to comply with this Agreed Order.

20. Nothing in this Agreed Order shall prevent or limit IDEM's rights to obtain penalties or injunctive relief under any applicable Federal or State law or regulation, except that IDEM may not, and hereby waives its right to, seek additional civil penalties for the same violations specified in the NOV.
21. Nothing in this Agreed Order shall prevent IDEM or anyone acting on its behalf from communicating with the EPA or any other agency or entity about any matters relating to this enforcement action. IDEM or anyone acting on its behalf shall not be held liable for any costs or penalties Respondent may incur as a result of such communications with the EPA or any other agency or entity.
22. This Agreed Order shall remain in effect until IDEM issues a Resolution of Case letter to Respondent.

TECHNICAL RECOMMENDATION:  
Department of Environmental Management

By: Nancy Johnston  
Nancy Johnston, Section Chief

Enforcement Section  
Office of Land Quality

RESPONDENT:

By: Glenn W. Johnson  
Printed: Glenn W. Johnson  
Title: COO  
Date: 2 July 2010

Date: 7/6/10

TECHNICAL RECOMMENDATION:  
Department of Environmental Management

By: Phil Perry

Phil Perry, Chief  
Compliance and Enforcement Branch  
Office of Air Quality

Date: 7/6/10

COUNSEL FOR RESPONDENT:

By: \_\_\_\_\_

Date: \_\_\_\_\_

COUNSEL FOR COMPLAINANT:  
For the Indiana Department of Environment Management

By: Julie Lang

Julie Lang  
Deputy Attorney General

Date: 7/6/2010

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL  
MANAGEMENT THIS 6<sup>TH</sup> DAY OF July, 20 10.

For the Commissioner:

Bruce H. Palin  
Bruce H. Palin  
Assistant Commissioner  
Office of Land Quality